

MINUTES

**MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: By **CHAIRMAN BRENT R. CROMLEY**, on January 28, 2005
at 3:25 P.M., in Room 317-A Capitol.

ROLL CALL

Members Present:

Sen. Brent R. Cromley, Chairman (D)
Sen. John Esp (R)
Sen. Duane Grimes (R)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Trudi Schmidt (D)
Sen. Dan Weinberg (D)
Sen. Carol Williams (D)

Members Excused: Sen. John Cobb (R)

Members Absent: None.

Staff Present: Rita Tenneson, Committee Secretary
David Niss, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 267, 1/24/2005; SB 257,
1/24/2005
Executive Action: None.

HEARING ON SB 257

Opening Statement by Sponsor:

SEN. DUANE GRIMES (R), SD 39, opened the hearing on **SB 257**, Clarify certificate of need requirements for critical access swing beds.

SEN. GRIMES explained the history of Certificate of Need and gave the Committee a copy of a Certificate of Need policy article by the Rimrock Foundation for Committee review. He said Certificate of Need is a common name for a diverse group of health care laws, developed to control health care costs, by regulating supply.

EXHIBIT (phs22a01)

{Tape: 1; Side: A; Approx. Time Counter: 0 - 11.9}

Proponents' Testimony:

Rose Hughes, Executive Director, Montana Health Care Association, gave the Committee a handout which she summarized. She said this involves long-term care, specifically, skilled nursing care. Under the Certificate of Need Law, hospitals are exempt, except if they are providing services which are covered. It allows hospitals to license up to five swing beds, without Certificate of Need review. If they want to have more than five swing beds, they are required to go through Certificate of Need review. **Mrs. Hughes** gave the Committee seven exhibits with various testimony relating to the swing beds.

EXHIBIT (phs22a02)

EXHIBIT (phs22a03)

EXHIBIT (phs22a04)

EXHIBIT (phs22a05)

EXHIBIT (phs22a06)

EXHIBIT (phs22a07)

EXHIBIT (phs22a08)

{Tape: 1; Side: A; Approx. Time Counter: 11.9 - 22}

David Espeland, CEO, Fallon Medical Complex, Baker, MT, spoke in favor.

EXHIBIT (phs22a09)

James Holcomb, Executive Director, Park Place Health Care Center, Great Falls, read his written testimony in support.

EXHIBIT (phs22a10)

Doris Gilbertson, Administrator Discovery Care Center, Hamilton, read her written testimony in support.

EXHIBIT (phs22a11)

Kathryn E. Beaty, Administrator, Valley View Estates, Hamilton, read her written testimony in support of **SB 257**.

EXHIBIT (phs22a12)

Bob Vonada, Administrator, Colonial Manor, Deer Lodge, told the Committee long-term care is based on economy to scale. His daily rates are cheaper than what some hotels charge during summer tourist season. It is important for them to keep all their beds full and keep people working and costs at bay. Empty beds destroy their economy to scale. When this happens, they have to pass their costs on to the private factor and work with the State to get additional money. He gave various examples of their expenses in relation to their income.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 8.6}

Peter Birkholz, Nursing home administrator, both owned and operated by Madison County, said adjacent to each of the facilities is a hospital. The hospitals are separately managed by a hospital district. These hospitals have changed their licenses to be designated as critical access hospitals. Because of this, they can keep skilled nursing home patients longer, and are paid several times the rate as nursing homes because of cost-safe reimbursement. Because of this, both of his nursing homes have a 50% decline in Medicare census. Hospitals' reimbursement is sometimes three to four times the rate as their nursing homes. He referred the Committee to Rose Hughes' exhibit #3 which shows their occupancy at 69%, with 15 empty beds, and the Sheridan occupancy at 74% with 10 empty beds. He said none of the nursing homes on Mrs. Hughes chart were at their full capacity.

{Tape: 1; Side: B; Approx. Time Counter: 8.6 - 12}

Sherri Haharg, Administrator, Big Sky Care Center, Lantis Enterprises, Inc., in support of **SB 257**, read her testimony and presented testimony from Jerry Smyle, VPO, Lantis Enterprises, Inc.

EXHIBIT (phs22a13)

EXHIBIT (phs22a14)

Opponents' Testimony:

John Cosco, Chief Executive Officer, Powell County Memorial Hospital, Deer Lodge, said he didn't see swing beds adding or subtracting beds within the community as an additional cost. He thought this could be managed day to day without the Certificate of Need process.

{Tape: 1; Side: B; Approx. Time Counter: 12 - 16}

Gene Vukovich, Board of Directors, Community Hospital, Anaconda, read his testimony in opposition to **SB 257**.

EXHIBIT (phs22a15)

John Bartos, CEO, Marcus Daly Memorial Hospital, Hamilton, told the Committee that, prior to December 1, Marcus Daly was a 48-bed hospital with six PCU's and five swing beds. They did not use the swing beds, they used the PCU beds. He said, in the past three years, they have had 16 acute patients and four PCU patients. The hospital offers physical therapy, occupational therapy, and speech therapy 365 days-a-year. Patients in the PCU unit utilize that service. He explained the hospital's losses last year were \$1.1 million.

EXHIBIT (phs22a16)

{Tape: 1; Side: B; Approx. Time Counter: 16 - 27}

{Tape: 2; Side: A; Approx. Time Counter: 0 - 0.3}

Janie McCall, Beartooth Hospital, Red Lodge and Deaconess Billings Clinic, Big Sandy Medical Clinic, said all three facilities oppose **SB 257**.

Bob Olsen, Montana Hospital Association (MHA), in opposition, read written comments and gave additional testimony contained in the following tape count.

EXHIBIT (phs22a17)

{Tape: 2; Side: A; Approx. Time Counter: 0.3 - 7.8}

Informational Testimony:

Mary Dalton, Quality Assurance Division Administrator, Department of Health and Human Services (DPHHS), told the Committee her Department administers the Certificate of Need Program, and she

and **Clara Williams, Co-Administrator**, are here to answer questions.

Questions from Committee Members and Responses:

SEN. O'NEIL asked **Mr. Vulkovich** to respond to his statement that the Certificate of Need process was flawed. **Mr. Vulkovich** said the information was given to him by his chairman who was unable to be here today and deferred the question to **Mr. Olsen**. **Mr. Olsen** said, in their perspective, the flaw was the method for determining bed need related to the age of the population. Nursing home care produces so many beds, is difficult to determine. There are so few applications for CON's the process is as much political as it is measuring real community need for health services.

SEN. WEINBERG asked **Mrs. Dalton** to briefly tell the Committee the process to fulfill the Certificate of Need. **Mrs. Dalton** told him you submit a fee to the State for applying for a Certificate of Need. You fill out information about what is needed. Nursing home applicants talk about the census in surrounding areas and what service is provided that would be different. **SEN. WEINBERG** asked if she could quantify the expense and time going through the process. **Mrs. Dalton** said it depended upon whether the process was being opposed or not.

SEN. CROMLEY asked **Mrs. Dalton** about the advantages for becoming a critical access hospital. **Mrs. Dalton** told him they get a different kind of payment from Medicare, which is the big driver for critical access hospitals. Medicare pays 101% of the costs. It is designed for critical care in rural areas. **SEN. CROMLEY** thought there would be no reason for a hospital not to become a critical access hospital. **Mrs. Dalton** said there are limitations. There is a community limitation of a 96-hour stay in critical access hospitals. They are limited to no more than 15 swing beds.

SEN. O'NEIL asked **Mr. Bartos** what the Certificate of Need process costs. **Mr. Bartos** said he has not applied for a Certificate of Need for 20 years. 27-years-ago, in White Sulphur Springs, it ran about \$30,000.00. In Stillwater community, in Columbus, it ran about \$80,000 because of opposition through the hearing process. **SEN. O'NEIL** asked if anyone present had recent figures. **Mr. Olsen** said it depends on what you are proposing to do. A new nursing home, in the competitive market, would be expensive. In rural areas, it has been lower, because they may have had to add only one swing bed. The Department then requires a \$3500

processing fee. Most aren't more than \$5000 or \$10,000, when they are competitive.

{Tape: 2; Side: A; Approx. Time Counter: 7.8 - 16.7}

SEN. ESP asked **Mr. Bartos** if he could justify his costs. **Mr. Bartos** said, if he was going to be designated twenty five acute/ swing beds and he wants ten additional beds, he is limited by statute to twenty five beds. His responsibility is to acute care. The swing beds are an ability for his patients, staff and physician for taking care of the patient through the disease process.

SEN. ESP asked **Mrs. Dalton**, about beds under the current law. **Mrs. Dalton** told him, under current law, they could have 25 beds, 15 of which can be acute. All 25 could provide swing bed care.

SEN. ESP then asked about the process being political. **Mrs. Dalton** couldn't answer this.

SEN. SCHMIDT asked if there was a difference of care in different situations. **Mr. Olsen** answered, if Medicare was paying the bill, you could choose your care. You can't go in a swing bed or a nursing home on Medicare unless you have been hospitalized. You can access nursing homes if you have been hospitalized. If you are on Medicaid, you don't get to chose. If there is a local community bed available and they both have CON's available, they both have licenses, and they are both certified, you don't get to choose. If you have medical needs the nursing home can't meet, or if they are full, then you can stay in a swing bed. If you pay privately, you get to choose.

{Tape: 2; Side: A; Approx. Time Counter: 16.7 - 23.2}

Closing by Sponsor:

SEN. GRIMES did not agree this was a political issue. He would rather call it a policy issue. He said this has to do with the cost of care of facilities in small communities. He told Mr. Bartos he did not mean to impinge on the integrity of any facilities, he meant to illustrate some communities where this was pronounced.

{Tape: 2; Side: A; Approx. Time Counter: 23.2 - 27}

HEARING ON SB 267

Opening Statement by Sponsor:

SEN. TRUDI SCHMIDT (D), SD 11, opened the hearing on **SB 267**, TANF low-income housing support; shelter allowance; grants prevent homelessness.

She said this is one of three bills speaking to housing.

Proponents Testimony:

Steve Yaekel, Montana Council for Maternal and Child Health, told the Committee he had been in seventeen communities in the past sixty days and housing for low-income people is a major problem. He asked the Committee to give the bill a do pass.

Eric Schiedemayer, Montana Catholic Conference, concurred with Mr. Yaegel's support of the bill. He added it gave flexibility to direct some funds into housing. He pointed out Section 3 which allows for extension beyond the 60-month limit in some cases.

{Tape: 2; Side: B; Approx. Time Counter: 0 - 6.7}

Opponents Testimony:

Hank Hudson, Administrator, DPHHS, was opposed because the funding for the bill is not included in the governor's budget and not part of the TANF fund spending. He pointed out the footnote, in the fiscal note, pertaining to the bill's resulting in a shortfall of funds at a later date. There are two parts to the bill. One part provides people who rent, if 75% of their total income is rent, an extra \$50 a month of TANF funds. The second part creates a fund of emergency assistance for people at the risk of becoming homeless. It would provide this money in a more flexible way than the current assistance fund.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. WEINBERG asked **Mr. Hudson** what the TANF budget was. **Mr. Hudson** replied, \$1,085,000 of TANF funds per year for the rent piece. \$243,698 of general fund for the emergency assistance used for non TANF eligible services per year.

SEN. CROMLEY asked **SEN. SCHMIDT** how the money is raised in Section 1. **SEN. SCHMIDT** told him the formula is cumbersome and

referred the question to **Mr. Hudson**. He replied, the \$50 shelter allowance refers to the additional \$50 the person would be paid if their rent was 75% of their total income from the TANF block grant.

SEN. CROMLEY requested an example of someone's rent being \$300 and what they would be entitled to. **Mr. Hudson** said, if the rent was \$300, and the total income was \$400, they would add another \$50 to their TANF benefit check.

SEN. O'NEIL wanted to know why the Department was subtracting the \$50 shelter allowance listed on page 1, line 13. **Mr. Hudson** said they would subtract the \$50 shelter allowance from the accountable income. That would have the result of adding the \$50 to the benefit check.

SEN. CROMLEY inquired about New Section 3, where a fund is raised so grants can be made. **Mr. Hudson** replied that grants is a term they use for cash benefits they pay people.

SEN. O'NEIL asked how many people the TANF money would keep in their homes. **Mr. Hudson** told him the fiscal note was calculated on serving 212 households based on the emergency assistance part. The number of people that would get the \$50 a month would be 1,809, a third of their case-load. The \$50 would be twelve months a year. The 212 people would receive this once during a year for an average cost of \$458. For utilities, it would be \$188 a month for 24 households. This is based on their previous emergency assistance experience. **SEN. O'NEIL** asked if the people were able to remain in their houses, would this save money somewhere else. **Mr. Hudson** wasn't sure the \$50 a month would keep people from becoming homeless.

{Tape: 2; Side: B; Approx. Time Counter: 6.7 - 22.1}

Closing by Sponsor:

SEN. SCHMIDT said it would have been ideal to have all the bills dealing with housing heard by one committee. The other bills are more expensive. She added that this bill bails people out at a critical time.

ADJOURNMENT

Adjournment: 5:10 P.M.

SEN. BRENT R. CROMLEY, Chairman

RITA TENNESON, Secretary

BC/rt

Additional Exhibits:

EXHIBIT ([phs22aad0.PDF](#))